

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES LUEDTKE,

Plaintiff,

v.

WILLIAM GREISBACH, KIRK OBEAR,
KARINE MORENO-TAXMAN, GINA
COLLETTI, RUDOPH RANDA,
ANTHONY ISHII, STANLEY BOONE,
BARBARA MCAULIFFE, DALE
DROZD, SHEILA OBERTO,

Defendants,

No. 1:21-cv-00718-TLN-HBK

ORDER

This matter is before the Court on its March 9, 2022 Order to Show Cause as to why Plaintiff James Luedtke (“Plaintiff”) should not be deemed a vexatious litigant. (ECF No. 14.) Plaintiff was given thirty days to respond. (*Id.*) To date, Plaintiff has not responded to the Court’s Order to Show Cause. For the reasons listed below, the Court finds that Plaintiff is a vexatious litigant.

///

///

///

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 On May 3, 2021, Plaintiff filed the instant *pro se* suit against multiple Defendants,
3 alleging various federal and state law violations. (ECF No. 1.) Pursuant to the *Pro Se* Three
4 Strike Database, the assigned magistrate judge found that Plaintiff “has filed at least 88 civil
5 actions or appeals in a court of the United States and has been deemed a three-striker under §
6 1915(g) by a number of courts.” (ECF No. 7 at 5.)

7 Due to Plaintiff’s status as a three-striker, the magistrate judge recommended Plaintiff be
8 ordered to pay the filing fee. (*Id.* at 20.) The magistrate judge further analyzed the underlying
9 claims and recommended dismissal based on Plaintiff’s failure to state a claim. (*Id.*) Finally, the
10 magistrate judge provided notice to Plaintiff of his potential designation as a vexation litigant.
11 (*Id.*)

12 Following the magistrate judge’s findings and recommendations, Plaintiff filed a “motion
13 for judge substitution” which the Court construed as a motion for recusal. (ECF Nos. 8, 10.) The
14 magistrate judge noted that the content of Plaintiff’s motion was “extremely hostile and
15 surpass[e]d defamatory or slanderous statements, bordering instead on threatening and clearly
16 misogynistic comments.” (ECF No. 10 at 1–2.) The magistrate judge pointed to seven pages of
17 derogatory and *ad hominem* attacks on her. (*Id.*) The magistrate judge recommended the District
18 Court consider issuing an Order to Show Cause as to why Plaintiff should not be deemed a
19 vexatious litigant under the All Writs Act. (*Id.* at 4.) On March 9, 2022, this Court adopted the
20 findings and recommendations in full and issued an order to show cause as to why Plaintiff
21 should not be deemed a vexation litigant. (ECF No. 14.)

22 **II. LEGAL STANDARD**

23 District courts have the inherent power to enter pre-filing orders against vexatious litigants
24 under the All Writs Act. 28 U.S.C. § 1651(a); *see Molski v. Evergreen Dynasty Corp.*, 500 F.3d
25 1047, 1057 (9th Cir. 2007). The Ninth Circuit has cautioned, however, that “such pre-filing
26 orders are an extreme remedy that should rarely be used” because of the danger of “tread[ing] on
27 a litigant’s due process right of access to the courts.” *Id.* Nevertheless, such pre-filing orders are
28 sometimes appropriate because “[f]lagrant abuse of the judicial power . . . enables one person to

1 preempt the use of judicial time that properly could be used to consider the meritorious claims of
2 other litigants.” *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990).

3 In *De Long*, the Ninth Circuit set forth the requirements for entering pre-filing orders
4 against vexatious litigants:

5 (1) The litigant must be given notice and opportunity to be heard before the order is
6 entered;

7 (2) The court must compile an adequate record for review, including a list of all filings
8 and motions leading to the conclusion that an individual is a vexatious litigant;

9 (3) The court must make substantive findings that the litigant’s filings are frivolous or
10 harassing; and

11 (4) The pre-filing order may not be overly broad, and must be “narrowly tailored to
12 closely fit the specific vice encountered.”

13 *De Long*, 912 F.2d at 1147–48.

14 **III. ANALYSIS**

15 The Court will go through the factors set forth in *De Long* in turn.

16 A. Notice and Opportunity to be Heard

17 The first factor simply requires the litigant be given an opportunity to oppose the order
18 before it is entered. *De Long*, 912 F.2d at 1147. It does not require an in-person hearing. Courts
19 in this circuit have held that a motion to declare a litigant vexatious does not require oral
20 argument. *See, e.g., Reddy v. MedQuist, Inc.*, No. 12-cv-1324-PSG, 2012 WL 6020010 (N.D.
21 Cal. Dec. 3, 2012) (“The requirement that the plaintiff receive an opportunity to be heard does not
22 require an oral hearing; the opportunity to brief the issue fully satisfies due process
23 requirements.”) (internal quotations omitted).

24 Here, the Court finds the first *De Long* factor is met because the Court issued an Order to
25 Show Cause and Plaintiff had an opportunity to file a written opposition. (ECF No. 14); *see also*
26 *Martin v. Redwood City Dental Care*, No. 15-cv-3151-JST, 2015 WL 9489898 (N.D. Cal. Dec.
27 29, 2015) (finding plaintiff was given an opportunity to be heard despite not responding to the
28 order to show cause or appearing at the hearing).

1 B. Adequate Record for Review

2 The second factor is merely procedural. *De Long*, 912 F.2d at 1147 (“An adequate record
3 for review should include a listing of all the cases and motions that led the district court to
4 conclude that a vexatious litigant was needed.”). It requires only that the court compile a list of
5 actions and filings by the litigant. *See, e.g., Hurt v. All Sweepstakes Contests*, No. C-12-4187-
6 EMC, 2013 WL 144047 (N.D. Cal. Jan. 11, 2013) (finding the second *De Long* factor met where
7 the court “compiled a list of all the actions Plaintiff filed”). Here, this factor is met as the Court
8 has listed and discussed seven prior filings in detail. (ECF No. 7 at 6.) Moreover, the Court has
9 cited to the PACER Database and the 88 civil actions filed by Plaintiff. (*Id.* at 56.)

10 C. Frivolous or Harassing Filings

11 The third factor “gets to the heart of the vexatious litigant analysis,” *Molski*, 500 F.3d at
12 1059, and requires the district court to look to “both the number and content of the filings as
13 indicia” of the frivolousness of the litigant’s claims, *De Long*, 912 F.2d at 1148. “An injunction
14 cannot issue merely upon a showing of litigiousness. The plaintiff’s claims must not only be
15 numerous, but also be patently without merit.” *Molski*, 500 F.3d at 1059.

16 The Court notes that the number of cases filed by Plaintiff is significant. *See De Long*,
17 912 F.2d at 1147 (citing cases involving 35, “over 50,” and “over 600” actions); *Miles v.*
18 *Makishima*, No. C-08-4091-MMC, 2009 WL 2512022 (N.D. Cal. Aug. 14, 2009) (same).
19 However, the number of lawsuits filed by the litigant need not even be as numerous as in the
20 instant action. *See Boustred v. Government*, No. C-08-00546-RMW, 2008 WL 4287570 (N.D.
21 Cal. Sept. 17, 2008) (finding “plaintiff has now brought three actions containing similar rambling,
22 largely incomprehensible claims against a multitude of defendants” sufficient in terms of finding
23 an “adequate record for review”).

24 Here, while the number of Plaintiff’s filings can conceivably establish him as a vexatious
25 litigant per se, the threatening, attacking, and patently without merit filings can do so as well.
26 *See, e.g., Huggins v. Hynes*, 117 F. App’x 517, 518 (9th Cir. 2004) (unpublished disposition)
27 (affirming district court’s pre-filing order in part because “Huggins abused the courts by
28 repeatedly relitigating the same controversy and repeatedly filing frivolous motions and

1 pleadings”). As discussed at length in the record, Plaintiff’s instant action includes harassing and
2 attacking filings that are patently without merit. The Court finds this factor is satisfied.

3 D. Narrowly Tailored

4 The fourth and final factor requires the pre-filing order be narrowly tailored to the
5 vexatious litigant’s wrongful behavior. *Molski*, 500 F.3d at 1061. “Narrowly tailored orders are
6 needed ‘to prevent infringement of the litigator’s right of access to the courts.’” *De Long*, 912
7 F.2d at 1148 (citing *Woods v. Santa Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1525
8 (9th Cir. 1983)).

9 Plaintiff has brought multiple lawsuits before multiple judges in this district, based on
10 previously rejected facts and theories. Moreover, Plaintiff is already labeled a “restricted filer”
11 and has a filing injunction entered against him from filing any civil rights actions, without
12 alleging he is in imminent danger of serious physical injury, in the United States District Court
13 for the Eastern District of Wisconsin. *See Luedtke v. Gudmanson*, Case No. 97-c-57 (E.D. Wis.
14 1997). Accordingly, the Court finds it appropriate to deem him a vexatious litigant and to fashion
15 a narrowly tailored pre-filing order as set forth below:

16 Plaintiff must obtain leave of Court before filing any further civil rights suits unless he is
17 alleging he is in imminent danger of serious physical injury. The Clerk of this Court shall not
18 accept for filing any further complaints filed by Plaintiff or on behalf of Plaintiff alleging any
19 claims described herein until that complaint has first been reviewed by a judge of this court and
20 approved for filing. The pre-filing review will be made by the general duty judge who will
21 determine whether Plaintiff has stated a potentially cognizable claim in a short, intelligible, and
22 plain statement.

23 IV. **CONCLUSION**

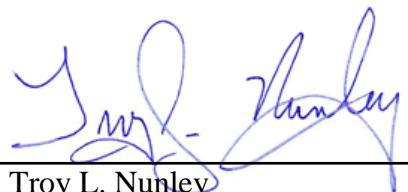
24 For the foregoing reasons, Plaintiff is hereby DECLARED a vexatious litigant. The Clerk
25 of this Court may not file or accept any further complaints filed by or on behalf of Plaintiff
26 alleging civil rights violations unless he is alleging he is in imminent danger of serious physical
27 injury. If Plaintiff wishes to file a complaint alleging any such restricted claims, he shall provide
28 a copy of any such complaint, a letter requesting that the complaint be filed, and a copy of this

1 Order to the Clerk of this Court. The Clerk shall then forward the complaint, letter, and copy of
2 this Order to the Duty Judge for a determination whether the complaint should be accepted for
3 filing. Any violation of this Order will expose Plaintiff to a contempt hearing and appropriate
4 sanctions, and any action filed in violation of this Order will be subject to dismissal.

5 IT IS SO ORDERED.

6 DATE: July 6, 2022

7
8
9
10


Troy L. Nunley
United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28